HOWARD ANGLIN, HUGH KILGORE, *et al*, Trustees of the Firemen's Pension Fund of the City of Atlanta, Petitioners, *vs.* A. J. BENDER	NO..... IN THE SUPREME COURT OF THE UNITED STATES October Term 1950

MOTION ON BEHALF OF THE RESPONDENT TO DISMISS PETITION FOR CERTIORARI

Now comes A. J. Bender, respondent, and respectfully moves the court to dismiss the petition for certiorari and to deny same on the following grounds:

1.

Respondent shows that said petition should be dismissed and should not be sanctioned for the reason that the elements essential to the jurisdiction of this Court in reviewing a decision of the court of last resort of the State of Georgia are lacking in that it appears that a decision by the Supreme Court of Georgia on the constitutionality of the Act of the Legislature of Georgia in question (Georgia Laws 1935, page 440) insofar as the Constitution of the United States was involved, was not necessary to the determination of the cause at issue, because a decision that the Act was invalid as violative of the Constitution of Georgia was sufficient to determine the case without reference to any Federal question. In this connection respondent shows that the Act in question (Georgia Laws 1935, page 440) was attacked as violating both the Federal and the State Constitutions, and the decision of the Supreme Court of Georgia held that the Act did violate both the Federal and the State Constitution. Thus it appears that a decision on

the Federal question was not necessary to the determination of the cause.

2.

Respondent moves the Court to dismiss the petition for the writ of certiorari, and to deny same, on the ground that the State and Federal questions are not so interwoven and enmeshed with the Federal question presented that the two cannot be separated. In addition to provisions which forbid impairment of the obligation of a contract found in the Federal Constitution and in the Constitution of the State of Georgia, the Respondent relied upon Article 12, Section 1, Paragraph 5 of the Constitution of Georgia which provides:

> "All rights, privileges and immunities which may have vested in or accrued to any person or persons, or corporations, in his, her, or their own right, under and by virtue of any Act of the General Assembly, shall be held inviolate by all the courts before which they may be brought in question unless attacked for fraud."

which provision of the Constitution of Georgia, Respondent shows, is substantially different, is wider in scope, and is more comprehensive than Article 1, Section 10, Paragraph I of the Constitution of the United States which provides:

> "No state shall pass any ex post facto law, or law impairing the obligation of contracts."

Respondent shows, therefore, even though this Court should reverse the Supreme Court of Georgia in its holding that the Act in question violated Article I, Section 10, Paragraph I of the Constitution of the United States, above quoted, and likewise erroneously decided that the Act in

question violated a similar provision of the Constitution of the State of Georgia, which questions are, to some extent, interwoven and enmeshed, nevertheless the decision of the Supreme Court of Georgia that the Act in question (Georgia Laws 1935, page 440) violated Article 12, Section 1, Paragraph 5 of the Constitution of Georgia, is an unrelated provision, substantially different from the Federal question and is a decision of the court of last resort of the State of Georgia, and is binding upon the petitioners for the writ of certiorari.

3.

Respondent shows that the petition for the writ of certiorari should be dismissed, and in any event should be denied, for the reason that the petitioners represent the City of Atlanta, chartered by the Legislature of Georgia, and existing only by virtue of statutes enacted by the General Assembly of Georgia, and in all things subservient to the Constitution and laws of the State of Georgia, the interpretation of which is vested by law in the Supreme Court of Georgia as final authority, and the Supreme Court of the United States ought not hear the complaint of the municipal authorities on an appeal from a decision of the court of last resort of the State of Georgia involving the interpretation of a local statute where the rights of a citizen of the United States are not denied, adversely affected, or impaired. Respondent shows in this connection that the petitioners for the writ of certiorari do not have such interests, and their individual rights as citizens are not so impaired or affected that the Court should entertain their petition to review and reverse the decision of the Supreme Court of Georgia.

4.

Respondent moves to dismiss the petition for writ of certiorari on the additional ground that the alleged con-

flict in decisions relied upon by petitioners in the writ of certiorari arises by virtue of interpretations placed upon statutes of different states by the court of last resort of such state, which condition and fact accounts for the alleged conflict of decisions. Respondent shows in this connection that there is no requirement or logic in a requirement that such decisions should be consistent with each other since they are based upon different laws and different interpretations of the law by authorities having the right to interpret same, and arise under different constitutions and statutes.

5.

Respondent shows that the petition for the writ of certiorari should be dismissed and in no event should same be granted because there is no public interest or substantial public right involved or deprivation of rights of an individual citizen to support an appeal in this case from a decision of the Supreme Court of Georgia on the interpretation of a statute of the State of Georgia, and the application of the Constitution of the State of Georgia thereto, so as to render said statute invalid. It is not shown in the petition for writ of certiorari that any substantial injustice will result to any person or to the public welfare. The principal decisions relied upon by the petitioners as in conflict with the decision of the Supreme Court of Georgia, from which appeal is sought, were rendered sixty years ago under conditions greatly at variance with conditions today, and on principles which have been expressly repudiated by the Supreme Court of Georgia, which has the right to interpret the statutes of Georgia, and is the final authority on the meaning thereof, and on the meaning of the provisions of the Constitution of Georgia.

WHEREFORE Respondent prays that the petition for the writ of certiorari be dismissed.

HAROLD SHEATS,
GUY PARKER,
Attorneys for Respondent,

A. J. BENDER,
Movant.

Harold Sheats and Guy Parker, Attys.
Post Office Address:
219 Hurt Building
Atlanta, Georgia

ACKNOWLEDGMENT OF SERVICE

Due and legal service of the within Motion to Dismiss the PETITION FOR THE WRIT OF CERTIORARI is hereby acknowledged. Copy Received. All other and further notice and service is waived.

This 16 day of October, 1950.

JOHN E. FEAGIN
Counsel for Petitioners in Certiorari